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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/765,270	01/18/2001	William Gross	IDEALAB.001A	6161

56020 7590 09/15/2005

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EXAMINER

MCCLELLAN, JAMES S

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/765,270

Applicant(s)

GROSS, WILLIAM

Examiner

James S. McClellan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,5-15 and 18-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 12-14 and 22 is/are allowed.
- 6) ☒ Claim(s) 1,8-11,15,20 and 21 is/are rejected.
- 7) ☒ Claim(s) 5-7,18 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Request for Continued Examination

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on June 29, 2005 has been entered.

Amendment

2. Applicant's submittal of an amendment on June 29, 2005 was entered, wherein:

claims 1, 5-15, and 18-22 are pending and

claims 1, 8, 9, 15, 20, and 22 have been amended.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 8-11, 15, 20, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Internet Publication to Ebay (www.ebay.com) in view of U.S. Patent No. 5,948,061 (hereinafter "Merriman").

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The Ebay Publication was published on 4/28/99 (see page 1, "Last Updated: 4/28/99") and was accessed on 9/3/03 via an Internet archive website (www.archive.com).

Regarding **claim 1**, Ebay discloses ranking offerings offered by at least one on-line vendor, comprising: operating a ranking module (using the Feature Auction option, see page 8, wherein the vendor selects whether to use the "Feature Auction" option to place their product at the top of the page, wherein Ebay receives a fee from the vendors that decide to use the "Feature Auction" option) affiliated with a first entity (Ebay), receiving a search parameter of a user (see page 1, "Search" input); identifying at least a first offering from an on-line vendor and a second offering from an on-line vendor that match the search parameter (see page 2, "Featured Auction", "Appear at the very top of the listings"); and ranking, with the ranking module, the first offering relative to the second offering so as to increase income received by the first entity (Ebay); calculating an estimated first selection revenue using the first selection likelihood and a fee to paid to the first entity (Ebay) in the event the user selects the first offering; and calculating an estimated second selection revenue using the second selection likelihood and a fee to paid to the first entity (Ebay) in the event the user selects the second offering.

Regarding **claim 15**, Ebay discloses a system that ranks offerings by at least one on-line vendor as set forth above for method claim 1.

The Ebay Publication discloses the method and systems as set forth above, but fails to explicitly disclose estimating a click likelihood by a user.

Merriman teaches the use of estimating a click likelihood by a user (see column 7, lines 35-43).

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It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Ebay Publication with user click likelihood information as taught by Merriman, because determining the likelihood of a user's desire to click on a product will allow the selling entity to more efficiently display items for purchase to the potential buyer.

Allowable Subject Matter

5. Claims 12-14 and 22 allowed.
6. Claims 5-7, 18, and 19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

7. Applicant's arguments filed June 29, 2005 have been fully considered but they are not persuasive.

All arguments are moot in view of new grounds of rejection necessitated by Applicant's amendment.

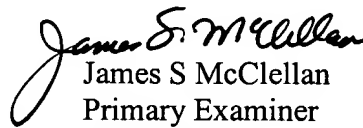
Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. McClellan whose telephone number is (571) 272-6786. The examiner can normally be reached on M-F (9:30-6:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


James S McClellan
Primary Examiner
Art Unit 3627

jsm
9/12/05